

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH PUCKETT,) 1: 05-CV-00447-REC-SMS
Plaintiff,)
v.) ORDER GRANTING PLAINTIFF'S
JUDGE JONES, et al.,) APPLICATION TO PROCEED IN FORMA
Defendants.) PAUPERIS (DOC. 3)
)
) ORDER DISMISSING PLAINTIFF'S
) COMPLAINT WITH LEAVE TO FILE AN
) AMENDED COMPLAINT WITHIN THIRTY
) DAYS OF SERVICE OF THIS ORDER
) (DOC. 1)

ORDER DIRECTING THE CLERK TO SEND
PLAINTIFF A BLANK CIVIL RIGHTS
COMPLAINT FORM

Plaintiff is a state prisoner at the Fresno County Jail proceeding pro se with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

I. Application to Proceed in Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to

1 proceed in forma pauperis will be granted.¹ 28 U.S.C. § 1915(a).

2 Pursuant to 28 U.S.C. § 1915(b)(1), plaintiff is required to
3 pay the statutory filing fee of \$250.00 for this action.² Because
4 Plaintiff has no funds, no initial partial filing fee will be
5 assessed by this order. 28 U.S.C. § 1915(b)(1). Plaintiff will be
6 obligated for monthly payments of twenty percent of the preceding
7 month's income credited to Plaintiff's trust account. These
8 payments will be forwarded by the appropriate agency to the Clerk
9 of the Court each time the amount in plaintiff's account exceeds
10 \$10.00, until the filing fee is paid in full. 28 U.S.C.
11 § 1915(b)(2).

12 II. Screening the Complaint

13 The Court must screen complaints brought by prisoners
14 seeking relief against a governmental entity or officer. 28
15 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion
16 thereof if the Court determines that an allegation of poverty is
17 untrue or that the action is 1) frivolous or malicious, 2) fails
18 to state a claim upon which relief may be granted, or 3) seeks
19 monetary relief from a defendant who is immune from such relief.
20 28 U.S.C. §§ 1915A(b), 1915(e)(2).

21 The test for malice is a subjective one that requires the
22 Court to determine whether the applicant is proceeding in good
23

24 ¹ Plaintiff is advised that the court is required to screen complaints brought by prisoners seeking relief
25 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court
26 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious,"
27 that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is
immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). The court will direct the United States Marshal to serve
plaintiff's complaint only after the court has screened the complaint and determined that it contains cognizable
claims for relief against the named defendants.

28 ² The statutory filing fee for all but habeas corpus actions is \$250.00.
28 U.S.C. § 1914, as amended effective February 7, 2005.

1 faith. Kinney v. Plymouth Rock Squab. Co., 236 U.S. 43, 46
2 (1915); see Wright v. Newsome, 795 F.2d 964, 968 n. 1 (11th Cir.
3 1986). A lack of good faith is most commonly found in repetitive
4 suits filed by plaintiffs who have used the advantage of cost-
5 free filing to file a multiplicity of suits. A complaint may be
6 inferred to be malicious if it suggests an intent to vex the
7 defendants or abuse the judicial process by relitigating claims
8 decided in prior cases, Crisafi v. Holland, 655 F.2d 1305, 1309
9 (D.C.Cir. 1981); if it threatens violence or contains
10 disrespectful references to the Court, id.; or if it contains
11 untrue material allegations of fact or false statements made with
12 knowledge and an intent to deceive the Court, Horsev v. Asher,
13 741 F.2d 209, 212 (8th Cir. 1984).

14 In reviewing a complaint under this standard, the Court
15 must accept as true the allegations of the complaint in question,
16 Hospital Bldg. Co. v. Trustees of Rex Hospital, 425 U.S. 738, 740
17 (1976), construe the pro se pleadings liberally in the light most
18 favorable to the Plaintiff, Resnick v. Hayes, 213 F.3d 443, 447
19 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor,
20 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

21 If the Court determines that the complaint fails to state a
22 claim, leave to amend should be granted to the extent that the
23 deficiencies of the complaint can be cured by amendment. Lopez v.
24 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A
25 complaint, or a portion thereof, should only be dismissed for
26 failure to state a claim upon which relief may be granted if it
27 appears beyond doubt that the Plaintiff can prove no set of
28 facts, consistent with the allegations, in support of the claim

1 or claims that would entitle him to relief. See Hishon v. King &
2 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355
3 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt Lake Log
4 Owners' Ass'n., Inc., 651 F.2d 1289, 1294 (9th Cir. 1981).
5 Dismissal of a pro se complaint for failure to state a claim is
6 proper only where it is obvious that the Plaintiff cannot prevail
7 on the facts that he has alleged and that an opportunity to amend
8 would be futile. Lopez v. Smith, 203 F.3d at 1128.

9 Here, Plaintiff sues Judge Jones, Attorney Magill, Judge
10 Kapetan, the District Attorney's Office, and the Superior Court.
11 He seeks damages and equitable relief. He complains that he was
12 convicted in 1996 of grand theft, apparently in the Superior
13 Court of San Francisco. Subsequently, he entered into a plea
14 bargain in December 2004 in the Fresno Superior Court that
15 included pleading to a strike under California's Three Strikes
16 Law, namely, a robbery that did not constitute part of
17 Plaintiff's criminal record. Plaintiff complains that the
18 District Attorney wrongfully filed the strike allegation, and
19 that it caused him pain, suffering, and emotional distress. In
20 March 2005 Plaintiff sought to withdraw the guilty plea, which
21 precipitated Judge Kapetan's appointing a public defender, which
22 Plaintiff alleged was a violation of his rights.

23 A. Defendants' Conduct

24 The Civil Rights Act under which this action was filed
25 provides:

26 Every person who, under color of [state law]
27 . . . subjects, or causes to be subjected,
28 any citizen of the United States. . . to the
deprivation of any rights, privileges, or
immunities secured by the Constitution. . .

1 shall be liable to the party injured in an
2 action at law, suit in equity, or other
proper proceeding for redress. 42 U.S.C. §
1983.

3
4 To state a claim pursuant to § 1983, a plaintiff must plead that
5 defendants acted under color of state law at the time the act
6 complained of was committed and that the defendants deprived the
7 plaintiff of rights, privileges, or immunities secured by the
8 Constitution or laws of the United States. Gibson v. United
9 States, 781 F.2d 1334, 1338 (9th Cir. 1986).

10 Further, the statute plainly requires that there be an
11 actual connection or link between the actions of the defendants
12 and the deprivation alleged to have been suffered by plaintiff.
13 See Monell v. Department of Social Services, 436 U.S. 658
14 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit
15 has held that "[a] person 'subjects' another to the deprivation
16 of a constitutional right, within the meaning of section 1983, if
17 he does an affirmative act, participates in another's affirmative
18 acts or omits to perform an act which he is legally required to
19 do that causes the deprivation of which complaint is made."
20 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Here, Plaintiff has failed to link each of the named
22 defendants with some affirmative act or omission that resulted in
23 an alleged deprivation of federally protected rights. Although
24 the complaint must be dismissed, Plaintiff will be given an
25 opportunity to amend to state a claim.

26 B. Judicial Immunity

27 Plaintiff appears to allege that Judge Jones's conduct in
28 accepting Plaintiff's plea and sentencing Plaintiff resulted in a

1 violation of Plaintiff's rights. Further, it appears that he is
2 alleging that Judge Kapetan's conduct in appointing a public
3 defender was a violation of his constitutional rights.

4 Absolute judicial immunity from damage actions under 42
5 U.S.C. § 1983 extends to judges for acts performed in their
6 official capacities and to officers whose functions bear a close
7 association to the judicial process. Demoran v. Witt, 781 F.2d
8 155, 156 (9th Cir. 1986); Ashelman v. Pope, 793 F.2d 1072, 1075
9 (9th Cir. 1986). It appears that the actions of which Plaintiff
10 complains are within the scope of judicial immunity.

11 C. Prosecutorial Immunity

12 State prosecutors are absolutely immune from civil liability
13 for acts taken in their official capacity that are closely
14 associated with the judicial process, such as initiating
15 prosecution and presenting the state's case. Imbler v. Pachtman,
16 424 U.S. 409, 427, 430-431 (1976); Milstein v. Cooley, 257 F.3d
17 1004, 1008 (9th Cir. 2001).

18 Plaintiff names the District Attorney's office as a
19 defendant, apparently with respect to charging decisions. Such
20 conduct would constitute conduct in the prosecutor's official
21 capacity of prosecuting the case such that absolute immunity
22 would attach.

23 D. Invalidation of Plaintiff's Conviction

24 Moreover, when seeking damages for an allegedly
25 unconstitutional conviction or imprisonment, "a § 1983 plaintiff
26 must prove that the conviction or sentence has been reversed on
27 direct appeal, expunged by executive order, declared invalid by a
28 state tribunal authorized to make such determination, or called

1 into question by a federal court's issuance of a writ of habeas
2 corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 U.S. 477, 487-88
3 (1994). "A claim for damages bearing that relationship to a
4 conviction or sentence that has not been so invalidated is not
5 cognizable under § 1983." Id. at 488.

6 Plaintiff has not alleged that the underlying conviction or
7 sentence has been reversed or otherwise invalidated by a state
8 tribunal. Accordingly, the claim should be dismissed.

9 E. Defendant Magill

10 To state a claim under section 1983, a plaintiff must plead
11 (1) that the defendant acted under color of state law and (2)
12 that the defendant deprived him of rights secured by the
13 Constitution or federal statutes. Gibson v. United States, 781
14 F.2d 1334, 1338 (9th Cir. 1986). Generally, private parties are
15 not acting under color of state law. See Price v. Hawaii, 939
16 F.2d 702, 707-08 (9th Cir. 1991).

17 Plaintiff names attorney Magill as a defendant. It appears
18 that Magill was acting as a private attorney in defendant
19 Plaintiff in the criminal action. Plaintiff has not alleged facts
20 showing how Defendant Magill was acting under color of state law.

21 Even if Magill was acting as Plaintiff's public defender,
22 Plaintiff nevertheless has failed to allege facts showing how
23 Defendant Magill has acted under color of state law. In order to
24 recover under § 1983, Plaintiff must allege and prove that
25 Defendants acted under color of state law to deprive Plaintiff of
26 a right secured by the Constitution or federal statute. Karim-
27 Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623 (9th Cir.
28 1988). It is established that a public defender does not act

1 under color of state law when performing a lawyer's traditional
2 functions as counsel to a defendant in a criminal proceeding.
3 Polk County v. Dodson, 454 U.S. 312, 317, 325 (1981); Rivera v.
4 Green, 775 F.2d 1381, 1384 (9th Cir. 1985).

5 F. Malice

6 It is not clear, but it is possible that Plaintiff is trying
7 to relitigate issues determined in a prior action, including
8 actions previously pending in this Court, such as Puckett v.
9 Fresno Superior Court, CIV F 03 6161 REC DLB; Puckett v.
10 Winchester, CV F 96-5207 OWW LJO, Puckett v. Hennessey, CV F 96-
11 6057 AWI SMS, Puckett v. Duncan, CV F 98-5845 OWW HGB. If this is
12 the case, it may be that Plaintiff's complaint is malicious and
13 should be dismissed. However, because Plaintiff's complaint is so
14 unclear, it is not possible to determine if the complaint is
15 malicious.

16 III. Dismissal with Leave to Amend the Complaint

17 In summary, the Court finds it necessary to dismiss the
18 complaint in its entirety. Plaintiff has failed to state a
19 cognizable claim against the Defendants and has failed to plead
20 facts demonstrating jurisdiction in this Court. However, it is
21 possible that Plaintiff can allege a set of facts, consistent
22 with the allegations, in support of the claim or claims that
23 would entitle him to relief. Thus, the Court will grant Plaintiff
24 an opportunity to amend the complaint to cure the deficiencies of
25 this complaint. Failure to cure the deficiencies will result in
26 dismissal of this action without leave to amend.

27 In addition, Plaintiff is informed that the Court cannot
28 refer to a prior pleading in order to make Plaintiff's amended

1 complaint complete. Local Rule 15-220 requires that an amended
2 complaint be complete in itself without reference to any prior
3 pleading. This is because, as a general rule, an amended
4 complaint supersedes the original complaint. See Loux v. Rhay,
5 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended
6 complaint, the original pleading no longer serves any function in
7 the case. Therefore, in an amended complaint, as in an original
8 complaint, each claim and the involvement of each defendant must
9 be sufficiently alleged.

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. Plaintiff's request for leave to proceed in forma
12 pauperis IS GRANTED; and

13 2. Plaintiff IS OBLIGATED to pay the statutory filing
14 fee of \$250.00 for this action. No initial filing fee will be
15 required. All fees shall be collected and paid in accordance with
16 this court's order to the Fresno County Jail filed concurrently
17 herewith; and

18 3. Plaintiff's complaint IS DISMISSED; and

19 4. The Clerk IS DIRECTED to send to Plaintiff a blank
20 form for a civil rights complaint; and

21 5. Plaintiff IS GRANTED thirty days from the date of
22 service of this order to file an amended complaint that complies
23 with the requirements of the pertinent substantive law, the
24 Federal Rules of Civil Procedure, and the Local Rules of
25 Practice; the amended complaint must bear the docket number
26 assigned this case and must be labeled "First Amended Complaint";
27 Plaintiff must file an original and one copy of the amended
28 complaint; failure to file an amended complaint in accordance

1 with this order will be considered to be a failure to comply with
2 an order of the Court pursuant to Local Rule 11-110 and will
3 result in dismissal of this action.

4
5 IT IS SO ORDERED.

6 **Dated: May 3, 2005**
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE